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CLARS

CENTRE FOR COMMERCIAL LAW AND REGULATORY STUDIES **HIGHLIGHTS 2023**



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WELCOME



We would like to welcome you to the first edition of **CLARS Highlights**. The Centre for Commercial Law and Regulatory Studies (or CLARS, as it is popularly known) is a Monash University Law Centre, focused on innovative research in the areas of corporate/commercial law and regulation.

Jennifer Hill
CLARS Director
Bob Baxt AO Chair in
Corporate and Commercial Law

Steve Kourabas
CLARS Deputy-Director

CLARS collaborates with select Monash University academics and postgraduate students, as well as visiting scholars and research partners from Australia and around the world. The Centre seeks to promote discussion of corporate/commercial law and regulation through teaching, scholarly publications, seminars, conferences and policy recommendations. One of our main goals is to make CLARS a vibrant research hub in this area, by engaging with students, members of the legal and business profession, policymakers, lawmakers and regulators, as well as the broader community.

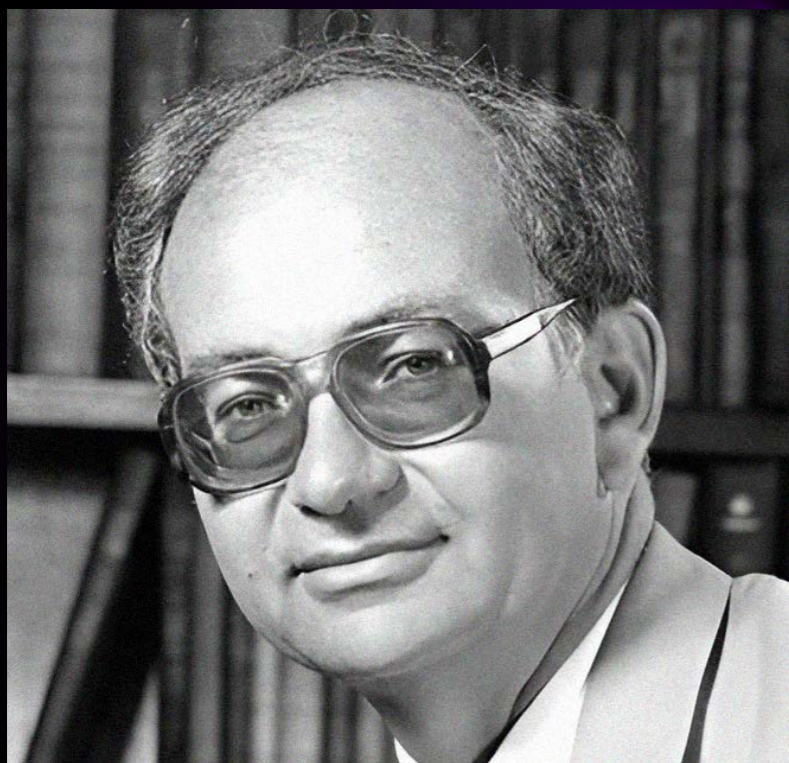
We hope that this edition of CLARS Highlights provides you with a good sense of what has been happening in the Centre. We also hope that you will join us for some of the CLARS events in the future. To find out more, follow us on social media, and visit our website to subscribe to our email list.

To discover more about CLARS and to RSVP to our upcoming events, scan the QR code or visit our website monash.edu/clars



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THE LEGACY OF BOB BAXT AO



CLARS is closely associated with the legacy of Bob Baxt AO. Bob Baxt was not only Dean of Monash Law but also head of the former Trade Practices Commission and a Partner, at different times, of two major international commercial law firms, Allens and Herbert Smith Freehills.

Bob Baxt was always excited by new ideas and he contributed to many fields of commercial law and regulation, including corporate law, competition and consumer law, taxation law and other related areas of law relevant to business regulatory policy, and practice. Most importantly, however, Bob was a 'people person'. He nurtured talented young lawyers and academics and promoted diversity. He also brought together leading international and Australian scholars, practitioners, judges and regulators to discuss exciting developments in corporate/commercial law and regulation. CLARS seeks to continue Bob's vision and goals in these matters.

ANNUAL BOB BAXT AO ADDRESS



The 2021 Annual Bob Baxt AO address in Corporate and Commercial Law

Professor John C. Coffee, Columbia Law School, on 'Systemic Risk' Shareholder Activism

CLARS held the first Bob Baxt AO address in Corporate and Commercial Law in October 2021.

The inaugural address was presented by Professor John C. Coffee, Jr., who is the Adolf A. Berle Professor of Law at Columbia Law School. Professor Coffee spoke on the topic, The Coming Shift in Shareholder Activism: From Firm-Specific to 'Systemic Risk' Proxy Campaigns (and How to Enable Them). Professor The Honourable Marilyn Warren AC QC, former Chief Justice of The Supreme Court of Victoria, provided introductory comments.

Professor Coffee's address explored burgeoning developments concerning systemic risk activism, in which an activist may put pressure on particular companies to reduce systemic risks, such as carbon emissions or risks associated with climate change, in a way that benefits other companies in the activist shareholder's portfolio.



The 2022 Annual Bob Baxt AO address in Corporate and Commercial Law

Professor Viktor Mayer-Schönberger, University of Oxford, on Policy Options to Control the Data Barons

CLARS held the second Bob Baxt AO address in Corporate and Commercial Law in October 2022, in conjunction with the Monash Data Futures Institute. The 2022 address was delivered by Professor Viktor Mayer-Schönberger, who is Professor of Internet Governance and Regulation at Oxford. The topic of Professor Mayer-Schönberger's address was Access Rules – What To Do About Data Barons. Introductory remarks were provided by Rebecca Maslen-Stannage, Chair and Senior Partner, Herbert Smith Freehills.

Professor Mayer-Schönberger's address examined the growing problem whereby a small number of digital superstars effectively capture the market. How should policy makers respond? A variety of possible solutions have been suggested, from expanding the scope for antitrust and competition law to imposing new taxes that target digital superstars. In his address, Professor Mayer-Schönberger cast doubt on the efficacy of these suggested policies. He argued that, to control the problem successfully, we need to get to its root cause, which is access to data. He outlined a novel data access regime and how it might work to control the data barons.

The 2022 Bob Baxt AO address in Corporate and Commercial Law was followed by a small private dinner, which included members and friends of the Baxt family. CLARS is grateful to Joanna Batstone and Monash Data Futures Institute (MDFI) for supporting this event, and to Richard Spurio and Allens for generously hosting the 2022 post-Baxt AO address dinner.

ENHANCING ACCOUNTABILITY IN CORPORATE AND FINANCIAL GOVERNANCE IN PRATO, ITALY

Monash University is fortunate to have a campus in Prato, Italy. Not only does the university have a campus there, but that campus is located in an Italian palazzo, the beautiful Palazzo Vaj.

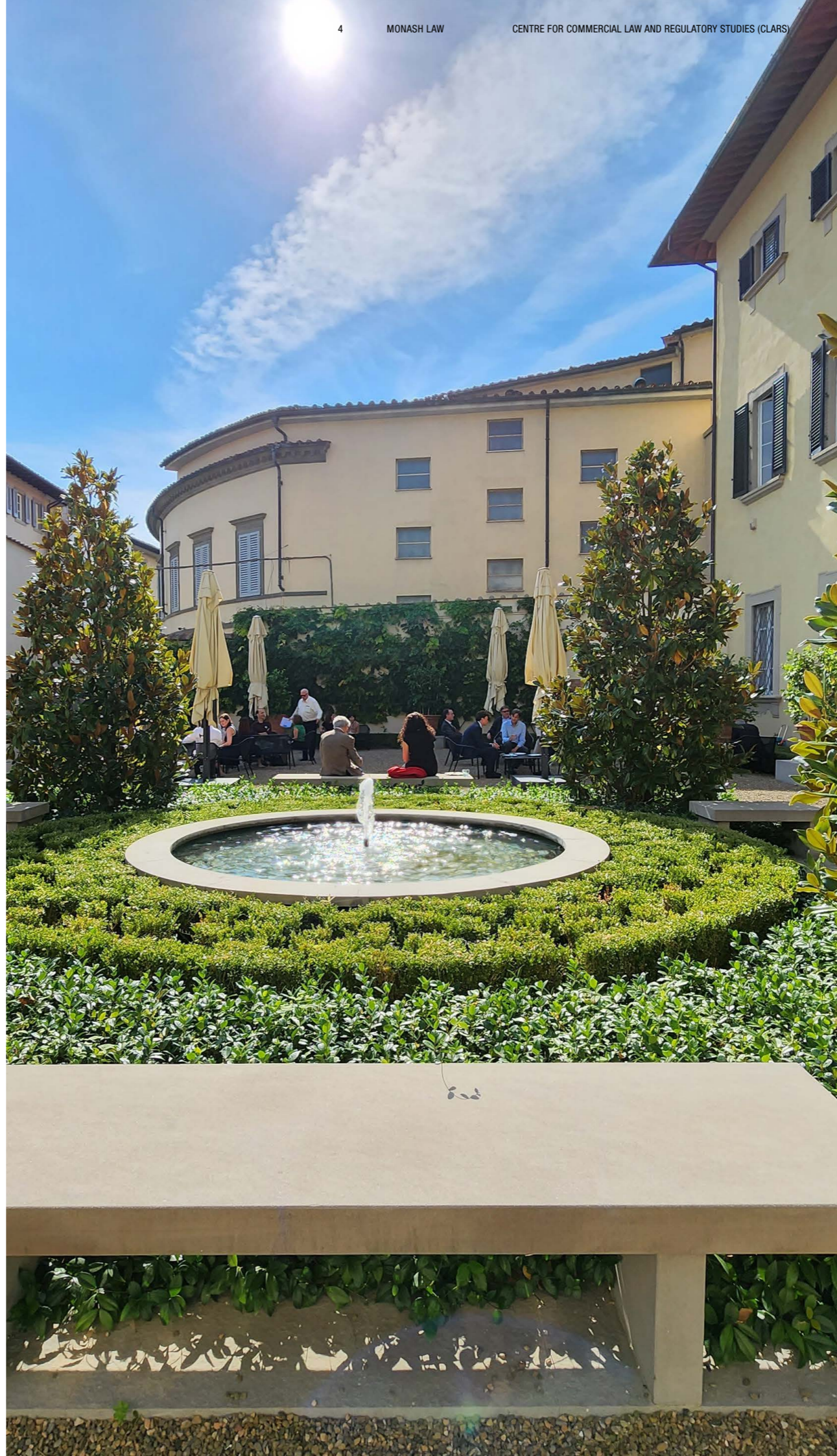


In October 2022, CLARS hosted an international conference, convened jointly with King's College London and Vanderbilt University, on the topic 'Enhancing Accountability in Corporate and Financial Governance'.

To read the full conference program and book of abstracts, scan the QR code or visit our website monash.edu/clars



Monash Law's Dean, Professor Bryan Horrigan, welcomed participants to the two-day Prato conference', which was convened by Centre Director, Jennifer Hill, explored governance in the business sector. The conference addressed the issue of how corporations can become more responsible and accountable in relation to some of the major challenges of our age, such as environmental degradation, climate change, COVID-19 and fall-out from geopolitical instability. The conference also examined how society can ensure that there are real consequences when companies (and the people who control those companies) act irresponsibly in corporate and financial governance.



The conference included leading scholars from the United States, the United Kingdom, Europe and Asia. In addition to participants from Monash Law, King's College London and Vanderbilt, participants at the conference included scholars from Aarhus University, Denmark; Cambridge University, England; Cornell University, USA; European University Institute (EUI), Italy; National University of Singapore (NUS), Singapore; Scuola Superiore Sant'Anna, Italy; Trinity College Dublin, Ireland; University of Edinburgh, Scotland; University of Genoa, Italy; and University of Leeds, England. The conference also included two presentations by PhD students from Monash Law and the EUI.

CLARS is grateful to Monash University for providing funding for research on the topic of 'Enhancing Corporate Accountability' under a Network of Excellence (NoE) grant and to Michael Mintrom and the university's Better Governance and Policy for providing sponsorship for the event.



CLARS LAW AND BUSINESS SEMINAR SERIES

CLARS convenes a high-level Law and Business Seminar series, which includes eminent scholars from around the world, as well as leading Australian practitioners and regulators as Commentators.



GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITY REVEALED

Dr Dionysia Katelouzou (King's College London) and *Professor Dan W. Puchniak* (Singapore Management University). In this seminar, the speakers discussed the dramatic rise of shareholder stewardship codes around the world over the last decade, as well as interesting differences that exist in those codes across jurisdictions (April, 2022).



THE CORPORATE GOVERNANCE MACHINE

Associate Professor Dorothy Lund (University of Southern California); *Commentator: Elizabeth Johnstone* (Chair, Australian Securities Exchange Corporate Governance Council). This seminar was based on Dorothy Lund and Elizabeth Pollman's award-winning article, "The Corporate Machine" (2021) 121 Columbia Law Review 2563. The seminar challenged the widely held view that corporate governance constitutes a neutral set of processes and practices that govern how a company is managed (June 2022).

WHAT'S A DIRECTOR TO DO? DIRECTORS' DUTIES IN TIMES OF COVID

Professor Kristin van Zwieten (University of Oxford); *Commentator: Dr Ruth Higgins* (Barrister, NSW Bar). The COVID-19 pandemic has had a major impact on many areas of corporate law, including directors' duties. In this seminar, Professor van Zwieten explored the English law treatment of directors' duties in relation to payments to creditors during the pandemic, while Dr Higgins provided insights on the impact of the pandemic on directors' duties in Australia (October 2022).



THE LONG TERM EFFECTS OF SHORT-SELLING AND NEGATIVE ACTIVISM

Professor Frank Partnoy (UC Berkeley School of Law); *Commentator: Tom Veidners* (Senior Manager Market Surveillance (ASIC)). Many commentators view short-selling and 'negative activism' (whereby activists seek to profit from declines in the share prices of targeted firms) as pernicious practices. In this seminar, however, Professor Partnoy argued that short-selling and negative activism can have potential benefits for policy makers and market participants (August 2022).



WHY PRIVACY MATTERS

Professor Neil M. Richards (Washington University in St. Louis); *Commentator: Professor Chris Marsden* (Monash Law). Recent data breaches at Optus and Medibank Private have brought into sharp focus the fact that privacy matters. In this highly topical seminar, Professor Richards examined why privacy is by no means dead in the modern era and deserves to be protected (September 2022).



CLARS AWARD FOR INDIGENOUS STUDENT EXCELLENCE IN COMMERCIAL LAW

In 2022, CLARS recognised outstanding academic achievement by Indigenous students in the corporate/commercial and regulatory space. CLARS made two \$1000 Awards for Indigenous Student Excellence.



Jessica Bennett

Is a proud Ngunnawal woman who grew up on Wiradjuri Country in Albury, NSW. In 2022 Jessica completed a Bachelor of Laws (Honours) and a Bachelor of Arts majoring in Human Rights and Indigenous Cultures in Histories, and her honours work explored the practical realisation of the right to self-determination through the implementation of Victorian treaties. Jessica is passionate about human rights and education and hopes to have a career as a legal practitioner where she can apply an ethics of care approach to her work. Jessica will take a place in the Victorian Legal Aid Graduate Program in early 2023.



Danielle Gower

Recently completed her first year of a Bachelor of Laws (Honours) and Bachelor of Arts, majoring in Indigenous Cultures and Histories at Monash University. She is a proud Aboriginal woman and has a particular interest in the ways that Indigenous Australians intersect with the modern legal system. She is currently completing an internship within the Victorian Government as a member of the Land Rights team under the Department of Premier and Cabinet. Danielle has a growing interest in contract law and is looking forward to undertaking further research and opportunities in which she can combine her interests.

INITIATIVES IN COMPETITION LAW



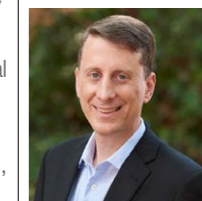
Dr Mel Marquis has collaborated on behalf of CLARS with Monash University's Centre for Global Business (CGB) to organise several high-profile competition law and economics seminars.

In May 2022, CLARS and CGB hosted a seminar in which Associate Professor Rob Nicholls of the University of New South Wales spoke on the subject of 'Algorithmic Collusion and Competition Law'. In his address, Professor Nicholls considered a relatively new challenge for Australian competition policy: the use of algorithmic pricing, where sellers employ artificial intelligence, or 'robots', that autonomously learn to adjust prices. He discussed the potential harm that may be caused to consumers by such AI-based pricing and the relevance of the law in addressing that harm.

In August 2022, CLARS and CGB hosted a seminar with Professor D. Daniel Sokol from the University of Southern California School of Law. Professor Sokol presented his joint research with two empirical economists on the topic 'Cookie Intermediaries: Does Competition Lead to More Privacy?' The seminar focused on pervasive data collection, risks to user privacy, and links with market structure.

Finally, in September 2022, CLARS and CGB hosted a unique roundtable on 'Competition Law in a Changing Economy and the Rise of the Digital Era', which brought together all four Chairs of the Australian Competition and Consumer Commission (ACCC). In addition to a keynote address by the current ACCC Chair, Gina Cass-Gottlieb, the roundtable included comments by her predecessors, Allan Fels (Chair, 1995–2003), Graeme Samuel (Chair, 2003–2011) and Rod Sims (Chair, 2011–2022).

The event wrapped up with a roundtable discussion moderated by former ACCC Commissioner, Roger Featherston. This one-of-a-kind 'summit' meeting addressed many of the ACCC's signature initiatives over nearly three decades and discussed prospects for future improvements that could be made to the *Competition and Consumer Act*.



RESEARCH HIGHLIGHTS

MARILYN PITTARD: 'THINK TANK' ON INDUSTRIAL RELATIONS AND WORKER PROTECTION

CLARS Member, Professor Marilyn Pittard, was recently part of a 'think tank' of industrial relations law experts exploring a new design for relations between business, employees and unions.

The 'think tank' resulted in the publication in 2022 of a book, *A New Work Relations Architecture*, which proposed a new model for regulating industrial relations. Marilyn's chapter redesigned fair labour standards and remuneration for the new model.

Marilyn's research has a strong focus on workers' vulnerabilities. For example, she has recently written on the issue of modern slavery, discussing how, as a result of the *Modern Slavery Act*, Australian businesses are now required to take proactive measures to avoid slavery in their supply chains. Also, in a recent grant funded project with Professor Adriana Topo at the University of Padua, Italy, Marilyn explores the potential for innovative technology and digitalisation to protect workers in both the business and public sectors. The theme of labour protection continues in her recent article, 'A Fair Deal? Justice in Dismissal in Australia' (*King's Law Journal*) and in her chapters, 'Criminalization, Social Exclusion, and Access to Employment' and 'Protecting Vulnerable Workers, Fairness and State Intervention' (in edited collections published by Oxford University Press and Hart respectively).

CHRIS MARSDEN: NEW MONASH DATA FUTURES INSTITUTE PROGRAMME DIRECTOR

CLARS Member, Professor Chris Marsden, is the 2023 programme director for law, humanities and social sciences for the Monash Data Futures Institute (MDFI). In this role, Chris will direct a programme of actions to leverage Monash's network of over 500 MDFI research associates, drawing on expertise of several of CLARS's AI and data experts, as well as other Monash Law experts.

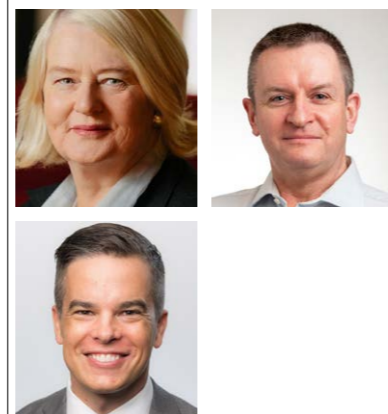
Chris is on the programme committee of the 2nd Monash AI Summit, to take place at Monash Prato on 17–20 July 2023. His international conference activities will also include his role on the programme committee of the prestigious Association of Computing Machinery's international conference, *Fairness Accountability Transparency (FAccT)*, to be held in Chicago in June 2023.

Finally, Chris is also leading an 'Artificial Intelligence Act and European law' seminar series with Monash Alliance partner Warwick University, with seminars scheduled for Warwick in May and Prato in June. The seminar series results from a winning bid for the Monash Warwick Alliance Activation Fund. The project title is *Interrogating the Brussels Effect: The European Union Artificial Intelligence Act*. The seminars will examine the potential for European Law to act as the de facto transnational standard for AI law, just as the General Data Protection Regulation has arguably done for data privacy law. For transnational commercial lawyers, EU regulation is proving to be the leading technology regulation example.

ANDREW MITCHELL: MAJOR NHMRC PROJECT ON HEALTH IN INTERNATIONAL INVESTMENT AGREEMENTS

CLARS Member, Professor Andrew Mitchell, is one of the researchers involved in a successful grant from the National Health and Medical Research Council (NHMRC) on the topic, 'Safeguarding Health in International Investment Agreements (IIAs)'.

The aim of the project is to identify best-practice options to successfully safeguard health in IIAs and to develop strategies for public health actors to support the inclusion of health safeguards in future IIAs.



RESEARCH HIGHLIGHTS



ADIEU TO THE 2022 CLARS INTERNS

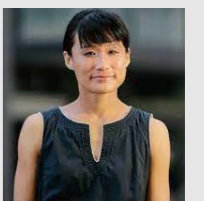
CLARS was fortunate to have Ella Hadley, Alana Komesaroff, Emma Ward and Ruby Wensor as our first group of Centre interns in 2022.

During that time, Ella, Alana, Emma and Ruby were engaged in a range of research projects associated with the Centre. Ella, Alana, Emma and Ruby are now embarking on the next phases of their future careers in law. For example, as well as continuing her studies in Law and Arts, Ella has started working as a Legal Assistant in Personal Injury Law at Robinson Gill Lawyers and Alana, who is the penultimate year of her Bachelor of Laws (Honours)/Bachelor of Science, is employed as a part-time paralegal in the field of intellectual property. Emma is currently working as a research and personal assistant for a commercial barrister and as a digital publishing assistant for the Judicial College of Victoria. Ruby spent the past year working as a paralegal in the General Insurance team at Hall & Wilcox.

YEE-FUI NG: FULBRIGHT SCHOLARSHIP TO NYU

In 2022, CLARS Member, Associate Professor Yee-Fui Ng, was a Fulbright Scholar at New York University's Center for Human Rights and Global Justice, where she undertook research which focused on her *Digital Welfare State and Human Rights Project*.

As part of this research project, Yee-Fui investigated successful policies in the United States and identified optimal and rights-protective strategies that would enhance the regulation of automated government decision-making in Australia. In particular, Yee-Fui's project aimed to contribute significantly to the accountability, efficiency and robustness of automated government decision-making, which is integral to Australia's system of administrative justice.



DANIEL FITZPATRICK: SCHOLAR-IN-RESIDENCE AT WOODROW WILSON CENTRE, WASHINGTON, DC

Centre Member and former CLARS Director, Professor Daniel Fitzpatrick, undertook a prestigious Scholar-in-Residence at the Woodrow Wilson Centre for International Scholars in Washington DC in 2022.

Daniel's project was entitled *Tipping Points: Land Tenure and Climate Mobility in Situations of Fragility, Conflict and Violence*. Funded by Congressional Charter, and situated at 1300 Pennsylvania Avenue, the Woodrow Wilson Centre for International Scholars has been ranked in the Top 10 of global research and policy centres. While at the Wilson Centre, Daniel gave presentations at NYU Law in New York and Loyola University in New Orleans.

Daniel's work at the Wilson Centre builds on his Future Fellowship scholarship on land tenure, climate change and disaster risk management in the Global South. Recent articles by Daniel are available in *Regulation & Governance* (2022) and the *American Journal of Comparative Law* (forthcoming 2023). Daniel's most recent book – *Law, Property and Disasters: Adaptive Perspective from the Global South* – is available from Routledge Press.



RESEARCH HIGHLIGHTS

THREE BOOKS ON CORPORATIONS BY CLARS MEMBERS

CLARS Members have published three new books on corporations.

At a recent gathering, The Hon. Justice Matthew Connock, Supreme Court of Victoria, launched the books and spoke about each of the new publications. The event was attended by Centre members and affiliates, PhD students, and guests from the legal and business profession.

Dr Joanna Kyriakakis' book, *Corporations, Accountability and International Criminal Law: Industry and Atrocity*, published by Edward Elgar, explores the prospect of prosecuting corporations or individuals within the business world for conduct amounting to international crime.

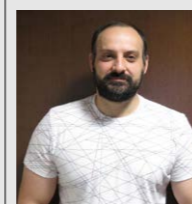
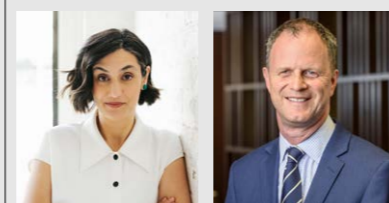
Dr Tim Bowley's book, *Activist Shareholders in Corporate Governance: The Australian Experience and its Comparative Implications* is published by Hart in the United Kingdom. In this book, Tim explores the rise internationally of shareholder activism in public companies, with a particular focus on developments in Australia. Tim provides empirical evidence which reveals that, despite an ostensibly activist-friendly setting, Australian shareholder activism is a nuanced and contingent phenomenon which does not fully conform to various key theories and assumptions in overseas scholarship and commentary.

Dr Steve Kourabas' book, *Global Finance in the 21st Century: Stability and Sustainability in a Fragmenting World*, published by Routledge, emphasises the importance since the global financial crisis of systemic financial stability and its link to the achievement of sustainable development goals. In his book, Steve argues that the achievement of economic growth and the pursuit of innovation must now be measured against stability and sustainability goals.

CLARS congratulates Tim, Steve and Joanna for these outstanding contributions to corporate law and governance literature.



From left to right: Dr Tim Bowley, The Hon. Justice Matthew Connock, Dr Joanna Kyriakakis and Dr Steve Kourabas.



RESEARCH HIGHLIGHTS

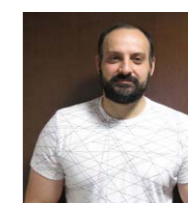
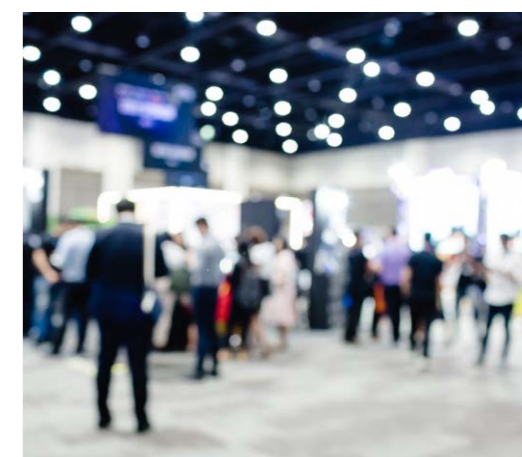
ONGOING RESEARCH PROJECT ON SHAREHOLDER ENGAGEMENT AND ACTIVISM BY INSTITUTIONAL INVESTORS AND MILLENNIALS

CLARS Members are engaged in international research projects on shareholder engagement and activism by institutional investors and millennials.

Tim Bowley and Jennifer Hill have written several recent articles and book chapters focused on institutional investor activism. These include a recent article and book chapter on shareholder rights. In 'Shareholder Inspection Rights in Australia: Then and Now', Tim and Jennifer explore the trajectory of Australia's statutory inspection right, and how it can potentially be used as a precursor to institutional investor activism.

Their recent book chapter, 'Stewardship and Collective Action: The Australian Experience', in *Global Shareholder Stewardship* (edited by Dionysia Katelouzou and Dan W. Puchniak, Cambridge University Press, 2022), Tim and Jennifer examine the potential for institutional investors to leverage their power through coordinated action with other institutions. In the article, 'The Global ESG Stewardship Ecosystem', they analyse the vast transnational ecosystem, in which institutional investors play a central role in placing increasing pressure on corporations to integrate ESG factors into their business models.

CLARS Deputy Director, Steve Kourabas, recently joined Tim and Jennifer for another research project on shareholder engagement, initiated by the University of Oxford, UK, and Bocconi University, Italy. Steve's involvement in this project brought another important aspect into the shareholder engagement mix – namely, the role of technology and its use by Millennial and Gen-Z investors in this regard. Steve, Tim and Jennifer's research on 'Shareholder Engagement Inside and Outside the Shareholder Meeting' was presented at a major corporate governance conference in Rome in October 2022. Steve's work builds on his recent research on equity crowdfunding and its implications for corporate governance in Australia. His article, 'Shareholder (Dis)Empowerment through Crowd-Sourced Equity Funding', is forthcoming in the *UNSW Law Journal* in 2023.



RESEARCH HIGHLIGHTS

THE PROSECCO PROJECT

Good wine is a topic close to the heart of many lawyers. CLARS Members, Caroline Henckels, and Mark Davison, with CLARS Affiliate Member, Lisa Spagnolo, have been involved in a long-running effort to challenge a controversial EU regulation regarding the use of the word 'Prosecco'.

The European Union (EU) is currently negotiating a free trade agreement with Australia, in which it is seeking to protect grape varieties as geographical indications (GIs) for wines. If Australia agrees to the EU's demands, Australian wine producers would no longer be able to label their products with the name of the relevant grape variety and would have to find an alternative name that is unlikely to be recognised within their markets. For example, the EU claims that 'Prosecco' is a GI rather than a grape variety, and that the grape used to make Prosecco is 'Glera'. Requiring Australian wine producers to label their Prosecco as something else would be likely to confuse consumers and cause Australian producers to lose market share. The EU's demands raise the significant, yet underexplored, question of the circumstances in which a GI should be recognised. Researchers in the Prosecco Project have examined claims to GI protection for the grape varieties Prosecco, Montepulciano and Nero d'avola.



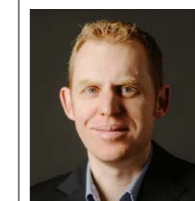
INTERNATIONAL LAW AND THE CHALLENGE OF POPULISM

International Law and the Challenge of Populism is a ground-breaking international research project that seeks to reframe the way we think about the relationship between international law and contemporary forms of populism.

Commonly, the rise of populism – especially contemporary right-wing nativist forms – is seen as posing a challenge to existing conceptions of world order and as a threat to international law and institutions. This form of populism has largely been understood as a political phenomenon external to international law, which has effects on international law. This project is particularly interested in exploring the ways in which the contemporary rise of populism may be understood as an effect of international law, the practices of institutionalised global ordering over at least the last 70 years, and the interconnection between state and corporate power at a global level.

From this point of departure, we can think about the responsibility of international law for populism, and begin to develop conceptual tools and strategies for engagement with its reactionary and emancipatory forms. The project engages scholars from the disciplines of law, history, politics, philosophy and international relations.

International Law and the Challenge of Populism is funded by an Australian Research Council Discovery Grant (2020–2023). The investigators are Dr Richard Joyce (Monash), Professor Sundhya Pahuja (University of Melbourne), Professor Andrew Benjamin (Monash), Professor James Martel (San Francisco State University) and Dr Rose Parfitt (University of Kent).



RESEARCH HIGHLIGHTS

MAJOR RESEARCH PROJECT WITH MINDEROO FOUNDATION ON PLASTIC POLLUTION

CLARS Member, Associate Professor Gerry Nagtzaam, and Deputy Director, Dr Steve Kourabas, recently undertook consultancy and research services on the implications of plastic pollution on human health for the Minderoo Foundation.

Gerry and Steve provided legal and strategic advice on the ongoing UN negotiations regarding the establishment of a Global Framework for Plastic Pollution to be concluded by 2025. This included Gerry's attendance and participation as Monash University's Observer at the United Nations Environmental Assembly 5.2 Meeting, which took place in Nairobi, Kenya, in February 2022 and the first International Negotiating Committee Meeting in Punta del Este, Uruguay, in November 2022. Gerry and Steve worked together with a team of Monash Law students to provide two Discussion Papers for Minderoo that provided detail on the negotiation and drafting of the treaty.

Gerry and Steve will continue to attend the UN Global Plastic Negotiations as the organisers, along with the World Wildlife Fund, of the Global Plastic Legal Service which provides free legal advice obtained from donor law firms to lesser developed states to help them negotiate more effectively at the meetings.



MONASH LAW TEACHING

New Corporate and Commercial Law Subjects

CLARS is seeking to expand the number of high level corporate, commercial and regulatory studies subjects on offer to students at Monash Law. These subjects are also available to be taken as one-off units (with or without assessment).

The subjects are taught in a variety of ways and different locations. Some are taught at Monash Law Chambers, located in Lonsdale Street, the heart of Melbourne CBD's legal precinct. Others may be taught at Monash University's Prato Campus or online.

► COMMERCIAL EQUITY

Taught by The Hon. Geoffrey Nettle AC QC

In 2022, The Hon. Geoffrey Nettle AC QC, who is a former judge of the High Court of Australia, taught a new subject, 'Commercial Equity', together with Mr Angus Willoughby, member of the Victorian Bar, and CLARS Member, Dr Nick Sinanis. The subject explored the evolution of certain core equitable doctrines most relevant to commercial practice from their early recognition up to recent decisions of the High Court of Australia.

► FINANCIAL SERVICES REGULATION

Taught by The Hon. Justice Ashley Black, Supreme Court of NSW

The Hon. Justice Ashley Black is the author of some of the leading texts on Australian corporations and securities law. He was appointed a judge of the Supreme Court of NSW in 2011, prior to which he was a partner at Mallesons Stephen Jaques (now King & Wood Mallesons). Justice Black taught an intensive course in 'Financial Services Regulation' for the first time in the Monash Law program in May–June 2023.

► INTERNATIONAL MERGERS AND ACQUISITIONS

Taught by Dr Tim Bowley, Monash Law

In 2022, Dr Tim Bowley taught a new intensive subject, 'International Mergers and Acquisitions'. Tim is a CLARS Member and was previously an M&A partner with a major Australian law firm.

The subject, which examined international and comparative aspects of modern takeover law, included a number of high-profile guest speakers. They were Bruce Dyer (M&A lawyer and former General Counsel, Australian Takeovers Panel); Waldo Jones (Partner, Sullivan & Cromwell); John Keeves (Partner, Johnson Winter Slattery and former Member, Australian Takeovers Panel); Rebecca Maslen-Stannage (Senior Partner, Herbert Smith Freehills and Member, Australian Takeovers Panel); Simon McKeon (Chancellor of Monash University and inaugural President of the Australian Takeovers Panel); Caroline Rae (Partner, Herbert Smith Freehills, London); Professor Bob Thompson (Georgetown University, Washington DC); Jason van Grieken (Partner, Arnold Bloch Leibler); and Professor Umakanth Varottil, National University of Singapore (NUS).

► REGULATING SHAREHOLDER ACTIVISM

Taught by Dr Tim Bowley, Monash Law

This subject, which was first offered in 2021, will be on offer again in 2023. It explores the nature of shareholder activism, which is one of the most topical issues in contemporary governance. The subject is designed to appeal to students who will pursue careers in law or business, as well as those who are seeking, or already undertaking, careers in government, public advocacy and policy development. In 2021, David Friedlander (Partner, King & Wood Mallesons); Diana Nicholson (Partner, King & Wood Mallesons) and Nicola Wakefield Evans, Non-executive Director) were guest speakers in the subject.

► SPORTS LAW, PUBLIC POLICY, REGULATION AND GOVERNANCE

Taught by Dr Eric Windholz, Monash Law and Mr Liam Elphick, Monash Law

'Sports Law, Public Policy, Regulation and Governance' was offered for the first time in 2022. The subject examines the governance of sport through multiple lenses: public policy, regulatory and legal, and at both a national and transnational level. It considers the place of sport in society, and how sport's social, cultural, economic and political importance shapes government policy towards it. Against this backdrop, the subject examines the complex and sophisticated regulatory system – a system that involves private and public elements and is decentred and networked, as well as national and transnational.

► INTERNATIONAL BANKING AND FINANCE LAW

Taught by Dr Steve Kourabas and Rowan Russell, Monash Law

In October 2022, CLARS Deputy Director, Dr Steve Kourabas, co-taught a very successful unit on 'International Banking and Finance Law' with CLARS Affiliate, Rowan Russell. Rowan was previously a partner at Mallesons Stephen Jaques (now King & Wood Mallesons), specialising in banking and finance law and capital markets. This subject was taught at the Monash University campus in Prato, Italy, where many of today's banking practices, in fact, originated.

► THE LAW OF CLIMATE CHANGE

Taught by Associate Professor Gerry Nagtzaam, Monash Law

In 2022, Associate Professor Gerry Nagtzaam taught 'The Law of Climate Change' at the Monash University Prato campus. It deals with the legal dimension of climate change, perhaps the most daunting global problem of the 21st century. The subject considers legal responses to climate change against a social, political and economic backdrop. Gerry taught the subject again in May 2023 at the Monash University Prato campus.

► ARTIFICIAL INTELLIGENCE, TECHNOLOGY REGULATION, AND CYBERLAW

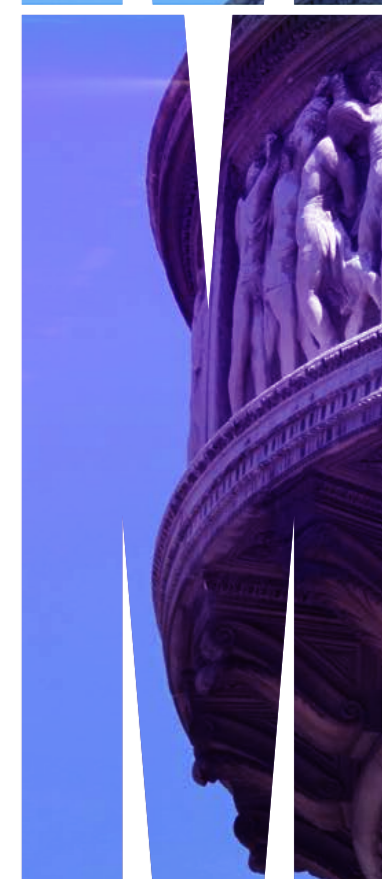
Taught by Professor Chris Marsden, Monash Law

Chris Marsden, who is Professor of Artificial Intelligence, Technology and the Law, will teach this fascinating subject in 2023. It explores some of the pressing policy choices faced by governments, institutions and stakeholders in the area of technology in a globalised world, and how those policy choices are translated into the law, in particular with regard to advanced machine learning techniques (AI).

► GLOBAL ISSUES IN PRIVATE AND COMMERCIAL LAW

Taught by Professor Jennifer Hill, Monash Law

This new subject was taught by Professor Jennifer Hill at the Monash University Prato campus in 2023. The subject examined a range of contemporary international corporate governance issues and debates, including the controversial topic of 'corporate purpose' and the rise of stakeholderism and ESG as critical aspects of contemporary corporate governance and business practice. The subject included guest presentations by leading Italian scholars in the field.



OTHER NEWS



NEERAV SRIVASTAVA: IMPORTANT MONASH PUBLICATION PRIZE

PhD student, Neerav Srivastava, who is associated with CLARS, was recently awarded the Monash Law Emeritus Professor HP Lee Student's Publication Prize for his article, 'Heritage and Vitality: Whether Antony Gibbs is a Presumption' (2021) 29 *Insolvency Law Journal* 61.

The Selection Committee for the Monash Publication Prize described Neerav's article in the following terms: 'This is an ambitious article, seeking to resolve an issue that has challenged cross-border insolvency law for over 100 years'. The Committee highlighted the article's deft movement 'from the historical to the modern with an exploration of the competing philosophical and theoretical underpinnings'. The impact of Neerav's article, which has already been cited in insolvency publications, is clear.

INVITATION TO JOIN PRESTIGIOUS ASIAN LAW INITIATIVE

CLARS has recently been invited to join a prestigious Asian Corporate Law Forum (ACLF), planning for which is underway.

This is a collaborative research project between some of the leading law schools in the Asia-Pacific region, with Monash University representing Australia in this elite consortium of universities in the Asia-Pacific region. More on this initiative to come!



DR NICK SINANIS: RECENT PHD FROM UNIVERSITY COLLEGE LONDON AND FORTHCOMING ARTICLE IN THE CAMBRIDGE LAW JOURNAL

In early 2022, CLARS Member, Dr Nick Sinanis, was awarded his doctorate from University College London (UCL) on the topic, 'Exemplary Damages: A Critical History'. Dr Nick's thesis presents the first systematic account of the theoretically controversial remedy of exemplary (or punitive) damages at historical common law. The thesis charts a period from the early seventeenth century, to the landmark decision of the House of Lords in *Rookes v Barnard* in the middle of the twentieth. Parts of Dr Nick's doctoral thesis have already been published in the *Journal of Legal History* and *Journal of Tort Law*. Most recently, a revised chapter has been accepted for publication with the prestigious *Cambridge Law Journal*. Entitled 'The North Briton No. 45 and the Doctrinal Origins of Exemplary Damages', the article seeks to re-interpret two famous eighteenth-century English tort cases by closer reference to the historical context in which they were decided – *Huckle v Money* and *Wilkes v Wood*. Decided in 1763, both cases arose from the publication of the allegedly seditious forty-fifth issue of the anti-government newspaper, *The North Briton*. In modern times, *Huckle* and *Wilkes* have been interpreted as the first cases to provide the exemplary damages remedy a positive basis at English common law. Dr Nick views afresh the primary sources in and around Michaelmas term 1763 and argues that there is good reason to doubt the accuracy of this widely accepted interpretation.

DR NICK SINANIS CONVENES AN INNOVATIVE CLARS TORTS WORKSHOP

In July 2022, CLARS Member, Dr Nick Sinanis, organised a very successful Torts Workshop on the topic, 'Researching Torts in Australia: Emerging Voices, Fresh Perspectives, at Monash University's downtown City Chambers'. The keynote address was delivered by leading torts scholar, Professor Claudio Michelin from Edinburgh University Law School. In addition to Nick Sinanis, there were many emerging dynamic torts scholars from around Australia who spoke at the conference. These were Martin Allcock (Curtin University); Michael Douglas (UWA); Sharon Erbacher (Deakin University); Andrew Fell (University of Queensland); Tina Popa (RMIT) and Laura Williams (La Trobe University). CLARS Member, Dr Paul Burgess, chaired the event.

The aim of the workshop was simple: to bring into friendly and fruitful conversation legal scholars who research the law of tort from a range of disciplinary perspectives, especially those at the early and middle stages of their careers. The workshop delivered on that aim admirably.



EMMANUEL LARYEA: CO-CONVENES CONFERENCE IN SOUTH AFRICA

CLARS Member, Associate Professor Emmanuel Laryea, together with Dr Martin Jarrett (Max Planck Institute for Comparative Public Law and International Law, Heidelberg) and Professor Jonathan Klaaren (Mandela Institute, University of Witwatersrand), hosted a two-day conference in Johannesburg, South Africa, in November 2022, under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). The conference was part of their research project *Making the Multilateral Investment Court Beneficial for Sub-Saharan Africa*, which is funded by the VW Stiftung, Germany, and supported by UNCITRAL. The project explores features that may be incorporated in the proposed Multilateral Investment Court ('MIC') for the settlement of international investment disputes to benefit Sub-Saharan African economies. Negotiations are currently underway at the United Nations (under UNCITRAL Working Group III) to reform the Investor-State Dispute Settlement System (ISDS). The MIC is seen as the main alternative. The aim of the research that Emmanuel and his international colleagues have undertaken is to inform various aspects of these negotiations.



JENNIFER HILL: INTERNATIONAL APPOINTMENTS

CLARS Director, Jennifer Hill, has recently been appointed to several international positions. She is now Chair of the Research Committee of the European Corporate Governance Institute (ECGI) and Director of the Corporate Purpose programme under ECGI's new Responsible Capitalism initiative.

Jennifer was also appointed as Director and Vice-Chair of the Global Corporate Governance Colloquia (GCGC), which is a global initiative designed to bring together the best research in law, economics, and finance relating to corporate governance via an annual conference hosted by twelve of the world's leading academic institutions.

Finally, Jennifer was appointed as an Academic Fellow of the Jean Monnet Centre of Excellence on Sustainable Finance and EU Law (EUSFIL) at the University of Genoa, Italy. As part of this project, Jennifer and Professor Roberto Barontini (Scuola Superiore Sant'Anna, Pisa, Italy) have recently co-authored a chapter on executive compensation for a forthcoming Cambridge University Press book on sustainable finance and EU law.

SOME CLARS EVENTS IN 2023

To register to attend CLARS events, and watch videos of past seminars, scan the QR code or visit our website monash.edu/clars



► The CLARS Video Portal features recordings of all our seminars, including the Annual Bob Baxt AO address in Corporate and Commercial Law.



STRATEGIES FOR WOMEN ON BOARDS – PROFESSOR CINDY SCHIPANI (UNIVERSITY OF MICHIGAN BUSINESS SCHOOL); COMMENTATOR: DEIDRE WILLMOTT (NON-EXECUTIVE DIRECTOR, AUSTRALIA POST)

Our first Law & Business Seminar for 2023 explored the important issue of women on company boards.



It makes little business sense not to have greater female representation in positions of power. Studies over many years indicate that companies benefit in several ways by having a gender diverse board. Yet, it's not enough to have a seat at the table if one's voice is not heard. This CLARS Law & Business seminar with Professor Cindy Schipani and Deidre Willmott discussed the strategies for ensuring that women have an effective voice on company boards (February 2023).



Professor Chris Marsden led an AI conference on behalf of CLARS and the Monash Data Futures Institute (MDFI) with the Wharton Business School, University of Pennsylvania. Speakers included Chris and Professor Kevin Werbach, who is the Liem Sioe Liong/First Pacific Company Professor and Professor of Legal Studies and Business Ethics at Wharton. The event was highly topical given recent concerns raised about the implications of ChatGPT for work and education (March 2023).



EVERYTHING YOU NEED TO KNOW ABOUT ISLAMIC BANKING AND FINANCE – PROFESSOR MOHAMED 'ARAF (ALEXANDRIA UNIVERSITY, EGYPT, AND CORNELL LAW SCHOOL, USA)

The CLARS Commercial Law Student Discussion Forum provides Monash students with seminars on a range of interesting topics. The speaker, Mohamed 'Arafa, is a Professor of Law at Alexandria University Faculty of Law (Egypt), and an Adjunct Professor of Law and the Clarke Initiative Visiting Scholar at Cornell Law School. The seminar in the series introduced students to the key features of Islamic banking and finance, analysing how they differ from their Western counterparts (May 2023).



FIVE YEARS OF CROWD-SOURCED FUNDING IN AUSTRALIA: TAKING STOCK (LITERALLY) – PROFESSOR ANDREW A. SCHWARTZ (UNIVERSITY OF COLORADO)

This CLARS Law & Business seminar discussed the law and regulation of crowd-sourced funding in Australia and compared it with international practice. The seminar also addressed the state of the Australian market and what it would take to achieve the full potential of crowd-sourced funding across this vast country (May 2023).



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